

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Best Medical International, Inc.	)	
	)	
Plaintiffs,	)	
	)	2:10-cv-1043
v.	)	
	)	
Accuray, Inc.	)	
	)	
Defendant.	)	

**UNOPPOSED MOTION FOR LEAVE TO FILE CLAIM CONSTRUCTION  
SUR-REPLY BRIEF IN EXCESS OF PAGE LIMITATIONS**

Defendant, Accuray Incorporated (“Accuray”), by and through its counsel, hereby requests permission to file Accuray’s claim construction sur-reply brief in excess of the page limitations previously set by this Court in its March 6, 2012 Order (Doc. No. 133), and states as follows:

1. On March 5, 2012, the parties jointly moved for leave of Court to file Opening and Responsive Briefs in excess of the 20-page limitation under the Court’s Practices and Procedures for briefs.

2. On March 6, 2012, the Court granted the parties’ request and entered an Order (Doc. No. 133) setting forth the following page limits:

Plaintiff may file an Opening Claim Construction Brief of no more than 45 pages;

Defendant may file a Response to Plaintiff’s Opening Claim Construction Brief of no more than 45 pages;

Plaintiff may file a Reply Brief of no more than 25 pages;  
and

Defendant may file a Sur-Reply brief of no more than 25 pages.

3. On March 26, 2012, Accuray filed an unopposed motion for leave to file its Responsive Claim Construction Brief (Doc. No. 136) in excess of the 45 page limit set by the Court.

4. On March 27, 2012, the Court granted Accuray's motion to increase Accuray's Responsive Claim Construction Brief page limit to 60 pages (Doc. No. 137).

5. On March 29, 2012, Accuray filed its Responsive Claim Construction Brief (60 pages) (Doc. No. 139), a Declaration of Dr. Isaac I. Rosen (Doc. No. 139-24) (41 pages, plus Exhibits), and twenty-three Exhibits (Doc. Nos. 139-1 — 139-23) representing extrinsic evidence.

6. On April 5, 2012, Best Medical moved for leave of Court to file its Reply Brief (Doc. No. 140) in excess of the 25 page limit set by the Court.

7. On April 9, 2012, the Court granted Best Medical's motion to increase Best Medical's Reply Brief page limit to 45 pages (Doc. No. 141).

8. On April 12, 2012, Best Medical filed its Reply to Accuray's Responsive Claim Construction Brief and Notice of Objections to Accuray's Identification of Extrinsic Evidence (Doc. No. 142).

9. Defendant Accuray has determined that due to the number of terms and phrases to be construed and the complex nature of the technology described and claimed in the '283 Patent, an additional 20 pages is required to adequately brief its Sur-Reply to Best Medical's Reply to Accuray's Responsive Claim Construction Brief and Notice of Objections to Accuray's Identification of Extrinsic Evidence.

10. Therefore, Accuray respectfully seeks leave of Court to file a Sur-Reply Brief of no more than 45 pages.

11. Accuray's counsel, Kirsten R. Rydstrom, conferred with plaintiff's counsel, Alan Towner, on this request and plaintiff's counsel advised that Best Medical would not oppose this request.

WHEREFORE, Accuray requests leave of Court to file its reply brief in excess of the page limitations set forth in this Court's March 6, 2012 Order.

Respectfully submitted,

/s/ Kirsten R. Rydstrom

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Date: April 23, 2012

CERTIFICATE OF SERVICE

I certify that on the 23rd day of April, 2012, I served the foregoing via electronic mail only on the following:

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By: /s/ Kirsten R. Rydstrom

Kirsten R. Rydstrom  
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